



## **Emergency Industrial Process Water Regulation Overview**

**Requested Action:** DWR recommends that the Commission approve the Emergency Industrial Process Water Regulation and supporting documentation by adopting the attached Resolution.

### **Background**

The state's comprehensive water package, passed in 2009, requires urban water agencies to achieve a 20% reduction in per capita water use by December 31, 2020. The law allows agencies that have a substantial percentage of industrial water use in their service area to exclude process water -- water that is used to create products -- from the calculation. This is to avoid a disproportionate burden on other customers, including residential customers.

For several months, DWR has been working with a large stakeholder group and analyzing industrial water use data to develop a proposal to implement the law and specifically, to determine how urban water agencies qualify for the process water exclusion.

Urban agencies are required by state law to submit their Urban Water Management Plans, including their 2020 water conservation targets, in July 2011. To provide these agencies with clear direction on the process water exclusions as soon as possible, the law requires DWR to develop emergency regulations. This will enable urban water agencies to make the appropriate planning decisions.

After the emergency regulation is adopted by the Commission and approved by the Office of Administrative Law (OAL), it will be in effect for 180 days. During this time, DWR will begin the formal rulemaking process to develop the permanent regulation on process water exclusion.

### **How was the regulation created?**

The proposed emergency regulation was created by DWR Water Use and Efficiency staff in collaboration with a stakeholder group. DWR used data from the California Urban Water Conservation Council and conducted its own analysis of water use in the state. DWR took the following initial steps:

- Analyzed total urban water use and industrial water use data from about 150 water suppliers obtained from California Urban Water Conservation Council for years 2005 through 2008.
- Conducted research to determine if a definition for “substantial percentage” exists and determined it did not.
- Convened a workgroup which was open to the public, stakeholders, and SBx7-7 Urban Stakeholder Committee members to obtain input to advise the decision-making process. This work group met five times between July-October 2010. DWR has worked to address the stakeholder concerns. Details of this back and forth process are outlined in the *Discussion Paper* which is included in this packet.

### **Statutory Language and Proposed Regulation**

*Section 10608.24 (e)* “When developing the urban water use target pursuant to Section 10608.20, an urban retail water supplier that has a **substantial percentage** of industrial water use in its service area, may exclude process water from the calculation of gross water use to avoid a **disproportionate burden** on another customer sector.” (Emphasis added)

State law assumes that a substantial percentage of industrial water use is necessary to create a disproportionate burden on other customer sectors. While a substantial percentage of industrial water use is the primary indicator to qualify for excluding process water, another criterion in the proposed regulations relates to a disproportionate burden on water users.

After careful analysis, DWR determined that what qualifies as a substantial percentage of industrial water use differs from community to community. As such, it is impossible to determine one number that represents a substantial percentage of industrial water use for all suppliers. For that reason, DWR included additional criteria that clearly represent a “substantial percentage of industrial water use to avoid a disproportionate burden on other customer sectors” regardless of percentage of industrial water use.

**The proposed emergency regulations provide four criteria to exclude process water. Urban water agencies which meet any of the following may exclude process water from their baseline gross water use when developing their water conservation plans:**

1. Total industrial water use is equal to or greater than 12% of gross water use
2. Total industrial water use is equal to or greater than 15 gallons per capita per day
3. Non-industrial water use is equal to or less than 120 gallons per capita per day

4. The population within the suppliers' service area meets the criteria for a disadvantaged community

Based on DWR's analysis, options 1 and 2 would allow approximately 1.2% of gross water use to be excluded.

1. Total industrial water use is equal to or greater than 12% of gross water use

DWR analyzed the distribution of industrial water use for approximately 150 suppliers that provided data to the California Urban Water Conservation Council. DWR determined that if an urban water supplier had more than 12% industrial water use in its service area, it would meet the 'substantial' threshold and, therefore, could exclude process water from its baseline gross water calculations. This would avoid placing a disproportionate burden on residential and other non-industrial water users in the service area.

2. Total industrial water use is equal to or greater than 15 gallons per capita per day

Data analyzed by DWR showed that there could be a disproportionate burden on residential and other non-industrial water users to meet water conservation requirements even when the industrial water use is less than 12% of gross water use. Therefore, per capita industrial water use was also used as an indicator of the burden.

Since the statute states that disproportionate burden needs to be avoided, DWR determined that if an urban water supplier had more than 15 gallons per capita per day of industrial water in its service area, it would meet the 'substantial' threshold and could exclude process water from its baseline gross water calculations. (See Figure 4 of the Discussion Paper).

3. Non-industrial water use is equal to or less than 120 gallons per capita per day

Urban water suppliers that have already achieved significant water conservation in their areas – defined as 120 gallons per capita per day or less, compared to a statewide average of approximately 170-190 gallons per capita per day -- could exclude process water from their baseline gross water calculations. The 120 gallons figure was determined based on statistical analysis of the non-industrial water use data and its distribution (see Figure 5 of the Discussion Paper), as well as comments from stakeholders. Providing this exemption would avoid a disproportionate burden on residential and other non-industrial sectors that have less capacity for conservation, based on their previous progress in reducing water usage.

4. The population within the suppliers' service area meets the criteria for a disadvantaged community.

Based on comments received from the workgroup, DWR recognizes that a disproportionate burden can occur if a water supplier's customers are in a disadvantaged community, even if a water supplier's industrial water use is below 12%. If a supplier meets the definition of a disadvantaged community and is unable to exclude industrial process water, it may result in a disproportionate burden for these customers, as they have reduced financial means to conserve.

**What happens when the Commission approves the emergency regulations?**

If the Commission approves the regulation at its November meeting, DWR will submit the full regulation package to OAL. OAL will allow a five day public comment period followed by 10 days for a procedural compliance review. Once OAL approves the emergency regulation, it will be in effect for 180 days.

DWR will then begin the formal Permanent Rulemaking process. This will include at least one public hearing and a public comment period of 45 days. DWR would continue to incorporate public feedback and further refine the process water regulations before bringing a proposed draft permanent regulation to the California Water Commission, likely in April 2011. Commission approval would be required for the permanent regulation as well. DWR's goal would be to develop the permanent regulation before the emergency regulation expires.

**What happens if the Commission does not approve the emergency regulation?**

If the Commission does not approve the regulation at its November meeting, DWR staff will take direction and input from the Commission, and continue working to create a regulation that meets the Commission's recommendations.

Failure to approve regulations would be inconsistent with state law allowing the process water exemption. It would also preclude the state's urban water agencies from excluding process water from their base daily per capita use. As a result, residents in service areas with a significant amount of industrial water use may face a disproportionate burden to meet water conservation targets.

**What concerns have been communicated to DWR about the proposed regulations?**

DWR has received a great deal of public comment and input about legislative intent of the statute as it relates to this regulation. Some organizations believe the current proposal is too broadly inclusive and would allow too many water agencies to exclude process water. In contrast, some water agencies and industry representatives have stated that the proposal is too

narrow, not flexible enough or overly complicated. DWR's attorneys have evaluated the regulation and believe it meets the legislative intent.

**Staff Recommendation**

DWR recommends that the California Water Commission approve the Emergency Regulation and all supporting documentation by adopting the attached Resolution.

Full details of how DWR staff addressed each concern are provided in the Discussion Paper.

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